Revenue (1926) Department.

Original SERIES.

G.O. No. 1926

DATED 5-11-26

[Despatch Abstract.]

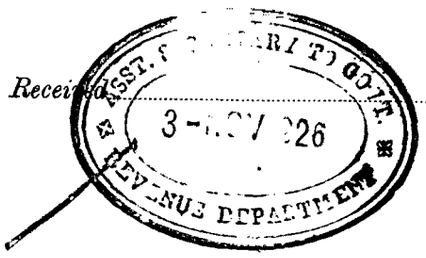
uits - (South Kanara) - Puttur District Munsif's court -

/25 - Ownership of trees - o appeal necessary.

REVENUE **DEPARTMENT.**

CURRENT No. 42388

Received ..... 192 . *Registered* 3.11. 1926.



Subject.

SUITS - (South Kanara) - Puttur District Munsif's Court - O.S. 683/25 - Ownership of trees - Appeal not recommended.

ENCLOSURES
No. .....
.....
Spare copies .....

Reference No. A.5883/26-1

Station Madras. , *Dated the* 2nd November 192 6

From W. Scott Brown Esq., I.C.S.,
Secretary.
Land Revenue. and
The Board of Revenue, /Revenue/ Settlement/ etc.
/Separate Revenue/

Resolution/ Reference.

P. L. Moore Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue.

Read the following:-

Letter from G.W. Wells Esq., M.A., I.C.S., Collector of South Kanara, No. Ref. on A-3-7945-25, dated 22-10-1926.

REFERENCE.

Submitted to Government for orders.

2. The Board agrees with the Collector in considering that no appeal need be filed against the District Munsif's judgment and decree in the case.

2.11.26.
for Secretary.

To the Secretary to Government, Revenue Department with enclosures ✓

Copy to the Collector of South Kanara.

V.C/2.11.26. P.T.O.,

Copy of letter from G.W. Wells Esq., M.A., I.C.S., Collector of South Kanara, No. Ref on A-3-7945/25, dated 22nd October 1926:-

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Suit - Puttur District Munsif's Court - O.S. 1925-683.

The above suit, the defence of which was sanctioned by the Government in G.O. No. Mis. 351, dated 1st March 1926, was disposed of by the District Munsif on the 6th August last.

2. The plaintiff's claim was in respect of two wild jack trees marked L and N in the Commissioner's plan. Our contention was that the plaintiff was not entitled to the trees and that he had no manner of right to them as the trees stood on Government unreserved land S.No. 130/2 of Kutrapadi village and that the Plaintiff was debarred from claiming the trees as he failed to appeal against the order of the Sub Magistrate in C.C. No. 180/1924 confiscating the trees under Section 517 (3) Cr. P.C.

3. The District Munsif has allowed the Plaintiff's claim in respect of one tree marked L and disallowed it in respect of the tree marked N, by holding that the evidence of the Plaintiff and of the Commissioner (P.W.2) made it quite clear that the tree L stood in S.No. 133/2 (mulgeni land of the plaintiff) and that an order of confiscation under Section 517 (3) did not and could not bar a civil suit. The District Munsif relies on the decision reported in I.L.R. 40 Bombay 200 in support of this view. I find that the finding of the District Munsif that the suit is sustainable in law is in accordance with the opinion No. 8 dated 23-2-1926 of the Government Pleader, Madras, communicated with the above G.O. sanctioning the defence in this case. The case in respect of the tree to which the plaintiff's claim has been allowed by the District Munsif was found to be weak at the very outset. It was not included in the Forest offence report in which the plaintiff was charged before the Sub Magistrate in C.C. 180/1924. It was on this ground that the Board in its Reference A.No.7307/25-1 Confidential dated 16-12-1925 considered that the order of the Sub Magistrate confiscating the tree could not be upheld and accordingly proposed a compromise of the suit, Government agreeing to give up their rights

to the said tree. Though the plaintiff did not agree to the compromise, the Board in its recommendation to the Government in its Reference No.A.604/26-1, dated 28-1-1926 proposed the defence of the suit only in respect of one tree. The Governmen however sanctioned the defence of the suit as a whole and appro the draft written statement proposing the defence in respect of both the trees.

4. The result of the suit depended upon the evidence adduce by the plaintiff. As stated above, the District Munsif held tha the evidence adduced by the plaintiff sufficiently proved his claim in respect of the tree marked L. The value of this tree is Rs.30. I do not think that it is worth while appealing against this decision. I solicit orders in the matter.

5. Our Vakil at Puttur has with his letter No. 111 dated 12-10-1926 sent a draft memorandum of appeal suggesting that an appeal may be tried on the ground that the evidence adduced by the plaintiff is not sufficient to prove his title to the tree in question, that the Sub Magistrate's order of confiscation is a bar to the plaintiff's claim to the tree and that the decision in I.L.R. 40 Bombay 200 relied on by the District Munsif is not applicable to the facts of the case. I do not think that these arguments will be of much use.

6. The suit was disposed of on 6-8-1926. Copies were applied for by the Vakil, Puttur, on 7-8-1926 and were delivered to the Vakil on 8-10-1926. The Vakil's letter dated 12-10- was received by me on 13-10-1926. As the appeal time will expir on 6-11-1926, I request that orders on this referenee may be ser to me before that date if it is considered that an appeal is necessary.

7. The records noted below are enclosed.

1. Copy of draft written statement.
2. Copy of judgment.
3. Copy of decree.
4. Certified copy of Commission order.
5. -do- Commissioner's report.
6. -do- Commissioner's plan.
7. -do- Deposition of P.W.1.
8. -do- " P.W.2.
9. Copy of judgment in C.180/24.
10. -do- vakil's letter dated 12-10-1926.
11. -do- draft appeal memo.
12. This office Dis. file 1970-25, dated 17-5-1925.
13. Records of O.R. 89/22-23 of Uppinangady Taluk.
14. Papers connected with N.Ref.C.3024/Sup/25 of Uppinangady Tal

S

In the Court of the District Munsif of Puttur, South Kanara.

Present:—M. R. Ry. N. V. Pai, Avergal, B. A., LL. B.

Friday, the 6th day of August 1926.

ORIGINAL SUIT NO. 683 OF 1925.

Between:—

Manjunatha Prabhu . . . . . *Plaintiff*

and

1. The Secretary of State for India in Council, represented by the Collector of South Kanara . . . . . } *Defendants.*
2. Narayana Pai . . . . . }

This suit coming on the 4th and 5th days of August 1926 for final hearing, in the presence of Messrs. K. Krishnaraya Shenoi and H. Ganapathi Rao, Vakils for Plaintiff, of Mr. B. Achyutha Baliga, Vakil for 1st Defendant, and 2nd Defendant being absent and declared *ex parte*, and having stood over to this day for consideration, the Court delivered the following—

Judgment:—Suit (1) to establish that the 2 wild jack trees of the measurement given in the plaint lying in S. No. 133/2 of Kutrupadi village belong to Plaintiff, (2) for a permanent injunction forbidding the Defendants from having those trees transported and (3) to enforce payment by Defendants of Plaintiff's costs of this suit.

2. The plaint allegations are these:—The land S. No. 133/2 of Kutrupadi village is the Plaintiff's mulgeni holding. It is in his possession. The wild jack trees which stood on this land fell down some years ago and are still lying there. One of these trees is 7.6×40, and the other is 7×43 in measurement. The 1st Defendant without any right whatsoever thereto caused those trees to be sold by public auction. The 2nd Defendant became the auction purchaser for the final bid. The Collector of South Kanara was moved to have the sale set aside, but to no purpose. The 2nd Defendant is endeavouring to have those trees transported from their place. Hence the suit, the cause of action for which arose from date of sale on 1—3—1925.

3. The 2nd Defendant is absent and placed *ex parte*.

4. The 1st Defendant contends *inter alia* that the trees in question stood on Government unreserved land S. No. 130/2 of Kutrupadi village and that Plaintiff has no manner of right to them. He pleads that the Plaintiff having caused the said trees to fall was prosecuted for offences under the Forest Act in C. C. 180 of 1924 on the file of the Sub-Magistrate of Puttur, that the Sub-Magistrate held that the plaint trees stood on Government land, and ordered them to be confiscated, that those trees were sold in auction by the Revenue Authorities and were purchased by the 2nd Defendant, that consequently the Plaintiff has no right to the trees or to question such sale. This Defendant contends that the Plaintiff having failed to appeal against the order of the Sub-Magistrate regarding the disposal of the property is now debarred from claiming the trees, and that the trees having been delivered to the 2nd Defendant the Plaintiff's suit for declaration and injunction without asking for possession is opposed to Section 42 of the Specific Relief Act, that the Plaintiff is not entitled to the declaration or injunction as against this Defendant and that the suit may therefore be dismissed with costs.

5. The following issues were framed by my predecessor in this suit.

(1) Did the plaint-mentioned trees stand in S. No. 133/2?

(2) Is the claim for value thereof barred and untenable in law?

(3) Is the claim opposed to Section 42 of Specific Relief Act?

(4) What relief is Plaintiff entitled to?

6. *Issue I.* L and N in the Commissioner's plan represent the two plaint wild jack trees; of these L is about 54 links to the west of the survey line joining points F and G. The evidence of Plaintiff and of the Commissioner (P. W. 2) makes it quite clear that the tree L stood in S. No. 133/2; as for the other tree N the Commissioner says it is possible that that tree may have slipped down from a little to the east. He cannot say where the tree N stood while it was a standing tree. The Plaintiff appears to have admitted in his statement to the Tahsildar (Exhibit I) that one tree stood in the kumki and was blown down into his land. Plaintiff now says that even before the Tahsildar he had urged his warg claim to both the trees. I hold on the evidence that the tree at L stood within Plaintiff's survey No. 133/2. Plaintiff has failed to establish that the tree N also stood in S. No. 133/2

7. *Issue II.* Plaintiff does not claim the value of the trees at all in this suit. The trees were ordered to be confiscated to Government under provisions of Section 517 (3) of the Code of Criminal Procedure (*see* Exhibit II). The contention of the 1st Defendant is that the Plaintiff having failed to appeal against the order of the Sub-Magistrate in C. C. 180 of 1924 regarding the disposal of the property, Plaintiff is now debarred from claiming the trees. An order of confiscation under Section 517 (3) does not and cannot bar a civil suit. Plaintiff challenges the jurisdiction of the Magistrate to make any order at all with regard to his trees and claims a declaration of his title thereto. The decision reported in Indian Law Report 40 Bombay at page 200 is against the contention of the 1st Defendant. The learned Government pleader refers me to Sections 47 and 48 of the Madras Forest Act and argues that a separate civil suit is barred because of those two Sections. I cannot accept the soundness of this contention. In the first place the word used in Section 47 of that act is *may* and not *shall* and Section 48 refers to orders of confiscation under Section 43 or Section 45 of that Act. Section 43 deals with cases where there is a conviction for a forest offence; Section 45 deals with cases where the offender is not known or cannot be found and the Magistrate is of opinion that an offence has been committed. Neither condition is fulfilled here. The Plaintiff was honourably acquitted by the Criminal Court which however dealt with the seizures under Section 517 (3) of the Code of Criminal Procedure. I hold that the suit is quite sustainable in law even though Plaintiff has not preferred an appeal against the order of the Sub-Magistrate in C. C. 180 of 1924.

8. *Issue III.* The trees were in Plaintiff's possession at the date of suit. The sale by the 1st Defendant to the 2nd Defendant had not disturbed the Plaintiff's possesion in the least. The Plaintiff was not bound to sue for possession as he had it already in him. The finding on this issue must be against the Defendant.

9. There will be a declaration of Plaintiff's absolute title to the wild jack tree at L in the Commissioner's plan and a permanent injunction restraining Defendants from transporting that tree or otherwise tampering with Plaintiff's possession of it. Plaintiff shall get half his costs from the 1st Defendant and shall pay the 1st Defendant half his costs. Costs allowed to each side shall carry interest at 6 per cent per annum from this date till payment.

Pronounced in open Court, this 6th day of August 1926.

(Signed) N. V. Pai,
District Munsif.

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DEFENDANTS' EXHIBITS.

I. 14—11—1922. Statement of Plaintiff before the Tahsildar of Uppinangady Taluk.

II. 29—10—1924. Judgment in C. C. No. 180 of 1924 on the file of the Stationary Sub-Magistrate, Puttur.

PLAINTIFF'S WITNESSES.

1. Manjunatha Prabhu (Plaintiff). 2. K. Rama Kudva.

(Signed) **N. V. Pai,**
District Munsif.

Exd.

Printing charges including money order and postage charges . . . . . Rs. As. P. 2—3—0.

(True copy).

Examiner.

Application No. made on . . . — —1926 by Vakil Mr.
Printing charges called for on . . . — —1926
Do. deposited on . . . . . — —1926
Copy ready on . . . . . — —1926
Do. delivered on . . . . . — —1926

Examiner.

4-9

In the Court of the District Munsiff of Puttur.

O.S.No.683/1925.

Manjunath Prabhu — Plaintiff.

The Secretary of State for India and another. — Defendants.

Written statement of 1st Defendant under Order II Rule I Act 5 of 1908.

The 1st Defendant states as follows:--

1. The Plaintiff's suit is unjust, speculative and unsustainable at law.

2. This Defendant denies that the 2 wild jack trees mentioned in the plaint existed in S.No.133/2 belonging to -------- Plaintiff on mulgeni right or that the trees in question belong to Plaintiff. On the other hand this Defendant states that the said trees stood on Government unreserved land. S.No.130/2 of Kutrapadi village and that the Plaintiff has no manner of right to them.

3. The Plaintiff having committed an offence among other things, by causing the said trees to fall and causing damage to them, he was prosecuted for offences under the Forest Act in --- C.C.180/24 on the file of the Sub Magistrate of Puttur. The Sub Magistrate held that the plaint trees stood on Government land and ordered them to be confiscated. Accordingly those --- trees were sold in auction by the Revenue Authorities through -- the Revenue Inspector of Uppinangadi and were purchased by 2nd Defendant who was the highest bidder. The Plaintiff has no --- right to the trees or to question such sale.

4. The Plaintiff having failed to appeal against the ----- order of the Sub Magistrate in C.C.180/24 regarding the disposal of the property, he is now debarred from claiming the trees. The Plaintiff's suit claiming the trees is unsustainable at law.

5. The plaint trees having been delivered to 2nd Defendant,

the Plaintiff's suit for declaration and injunction, without asking for possession is opposed to Section 42 of the Specific Relief Act.

6. The Plaintiff is not entitled to the declaration or injunction as against this Defendant.

7. All other allegations of the plaint, which are not expressly admitted herein are denied.

8. The Plaintiff's suit may therefore be dismissed with costs.

From-M.R.Ry.B.Achutha Baliga Avl., B.A., B.L.,

Pleader, P u t t u r.

To-The Collector of South Kanara, Mangalore.

No.111.

Dated 12th October 1926.

O.S.683/25 - Puttur Munsif's Court Suit against Government for recovery of 2 wild-jack trees.

I beg to send herewith the draft appeal memo, the certified copies of judgment, decree, commissioner's plan index and report and also depositions of witnesses examined. The records sent to me are also enclosed, together with the copy of the plaint and written statement and copies of Exhibits.

2. The Plaintiff Manjunatha Prabhu filed this suit for a declaration that the trees marked L and N in the ---- Commissioner's plan stood on his mulgeni land S.N.133/2 and that they belong to him. His claim in respect of tree N. was disallowed while the tree L was held by the court to belong to him. I pointed out in my letter No.29, dated 16th November 1925 that the case in respect of "tree" was weak.

3. The facts that led to the filing of the suit are these. The plaintiff was prosecuted for offences under the Forest Act in C.C.180/24 on the file of the Sub Magistrate of Puttur, in that he cut some trees from Government land and caused damage to one wild-jack tree (No.21 in Exhibit A marked in C.C 180/24) while digging and diverting a channel. The Sub Magistrate tried him and after examining witnesses acquitted him, holding that the case was not proved against him. But apparently holding that the trees stood on Government land, passed an order confiscating among other trees, the 2 plaint wild-jack trees. Then in consequence of the confiscation order 2 trees were sold by the Revenue Inspector of Uppinangadi in public auction and one Naraina Pai (2nd defendant in the suit) purchased them. There-upon the plaintiff sent a registered notice to the Collector and followed it by filing a suit for

for a declaration of his right.

4. In my opinion, there was an initial mistake committed while passing the confiscation order. The final offence report laid against Manjunatha Prabhu related among other things, to only one wild-jack tree No.19 in Exhibit A (C.C.180/24) corresponding to tree H in the commissioner's plain. But the Sub Magistrate seems to have gone beyond the offence report and confiscated both the wild-jack trees. And it is this that gave rise to the trouble. If the confiscation order was confined only to one tree, that tree alone would have been sold and Plaintiff's claim f that tree would have entirely failed, as it did in the suit.

5. Secondly though the Plaintiff was prosecuted under the Forest Act, the Sub Magistrate confiscated the trees under section 517 (3) Criminal Procedure code. To my mind the proper provision of law that can be availed of for passing the confiscation order is section 45 of the Fores Act. The District Munsiff holds that that section applies only in cases where the offender is not known or cannot be found. But, where, as here, the evidence being insufficient, does not bring home the guilt to the accused and does not show that the accused is the offende and the accused is acquitted, can it not be contended that the real offender is not known? If this contention is well-grounded, then section 43 applies and the order of confiscation has to be passed under that section. And I think, it is immaterial that the Magistrate has quoted a wrong provision of law. If the confiscation order is presumed or construed as having been passed under section 43, then the remedy of the Plaintiff lies only by way of appeal under section 47 or 48 of the Forest Act. Where there is a special statute penalising certain offences and that statute in itself provides a remedy for the aggrieved person, that person has to seek the remedy so provided and the jurisdiction of the ordinary civil

12 - 17

The Secretary of State for India in Council: Appellant.

Manjunatha Prabhu:- Respondent.

Appeal grounds.

1. The judgement of the Lower Court, to the extent appealed against is against law, weight of evidence and probabilities of the case.

2. The lowest court erred in holding that the tree marked L in the commissioner's plan stood on patta land S.N.133/2 of Respndent and that the said tree belongs to him. Barring the mere statement of the Respondent, there is absolutely no evidence to prove his owner-ship of the said tree.

3. The Lower Court has not properly considered Ex.I. In view of the Respondent's admission therein that the trees adjoining the tree L corresponding to trees M.N.P.Q marked in the commissioners plan stood on Kumaki land S.No.130 and slipped down and fell on his patta land owing to the collapse of the hill, the lower court ought to have held that the tree L also slipped from the hill and thrown down on the patta land.

4. The Commissioner P.W.2 having reported that the measurement of the Survey line F.G differs widley from the measurement in the survey sketch and that this difference might be due to the displacement of Survey-Stones, the Lower court ought to have held that the line F.G was not correctly drawn and that the position of the tree L shown as lying within the Survey line is not correct.

5. The Lower Court erred in relying on the mere surmise of the commissioner that the tree originally stood at the place where it fell down in as much as he observed no pit at the place from which it was uprooted.

6. The Lower court ought to have held that the order of confiscation is a bar to the Respondent's claim to the tree. The decision in 40 Bombay 200 relied on by the Lower court is not applicable to the facts of the case.

7. The sale of the plaint trees to 2nd defendant having taken place before suit, the Lower court ought to have held that the Respondent's claim for mere injunction is unsustainable under section 42 of the specific Relief Act.

8. The Lower court has not properly appreciated the contention for 1st defendant. Exhibits II shows that Plaintiff did not claim the plaint trees as warg trees in the course of the criminal trial. The Lower court's decree may therefore be set-aside and the Plaintiff's suit dismissed with costs.

H.D.U.24/10/26. Written

Appeal to ... Council (6.XI.26)

Appeal time expires tomorrow

Revenue department

4236 A/26

Previous papers
GO NO 351 Rev Bs 1.3.26

Suits — (South Kanara) — Puttur district Munsif's Court — O.S 683/25 — ownership of trees — Partial adverse decision — Filing of appeal — Desirability —

Pl. ... of [Board's Reference No A 5883/26-1 Bs 2.11.26]

To U.S

Extract placed at pg 7 of G.O 351 1.3.26 (G)

The plaintiff filed the suit against the Govt for a declaration that two jack trees which were ~~sold by~~ confiscated to Govt by the magistrate in a forest case and subsequently sold by them Govt belonged to him and stood within his patta limits. The plaintiff himself figured as the accused in the forest case, but he was acquitted for want of evidence to connect him with the offence.

2. The district Munsif has now decided that one of the trees (marked L in the Commissioner's ~~claim~~ plan) stood within the patta limits and belonged to the plaintiff; and has disallowed the plaintiff's claim for the other tree (marked N in the Commissioner's plan). He has also allowed only half the costs to the Govt. The question now is whether an appeal is necessary.

2. The Collector points out that the ownership tree now declared to belong to the plaintiff was found to be doubtful even at the very outset ~~outset when the R.J made enquiries~~ so much so that it

was not included in the Forest Offence Report in which the plaintiff was charged before the magistrate. The Gr. P Madras who was consulted about this case, has already stated that the case is one depends on the evidence that might be adduced in the suit; and As the Govt themselves have found in their enquiry that the evidence in support of their title to this tree was rather weak, it is submitted the District Munsif's finding on the evidence adduced before him cannot be said to be wrong or perverse

3. The only other point relied on by the Govt urged by the Govt in the written statement was that as the plaintiff not had not appealed against the Submagistrate's order in the forest case confiscating the tree, the magistrate's order had become final, and that the plaintiff's suit was therefore unmaintainable in law. The Munsif holds that the order of confiscation under section 5 17(3) C P C is no bar to the civil suit, + quotes the ruling in 40 Bomb. 200 in support of his view. The Gr. P. Madras has also in his opinion given in this case taken the same view, holding that the magistrate's order merely decides the question of right of possession till the civil court decides the question of ownership. It is not therefore conclusive. In view of the Gr. P's opinion, it is submitted the Gr. F Munsif's finding cannot be said to be illegal. In this connection attention is invited to one more fact which detracts from the value of the magistrate's order

The tree in question was not concerned in the offence report or the enquiry but the magistrate had still included it in the ~~confiscation~~ order of confiscation. The Board ~~has~~ therefore considered that the magistrate's order ~~in~~ respect of this tree could not be upheld and even offered a compromise, but as the plaintiff did not accept it, it had to be given up

P 1-2 of (G)

P 1-4 of

4. In view of these facts, both the Collector and the Board consider that no appeal is necessary, ~~for orders whether their view may be accepted~~. though the local Pleader who conducted the Court case in the Munsif's court, has suggested that an appeal might be tried on the grounds that the evidence is not sufficient to prove the plaintiff's title and that the magistrate's order is a bar to the civil suit. It is submitted that the Board's view ~~recommendation~~ that no appeal need be filed may be accepted. The appeal time expires tomorrow.

P 4 - 1 - 16 of

~~EP~~ 4/11/26

EP
5/11/26

No appeal need be filed.

5.11.26

To U.S

A draft order is submitted for approval.

Issue.

5/11

EP
5/11/26

Sectt. II-5 (a)—28,703—6-12-24. (6)

Revenue DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..	5/11	N.M.
When examined ..	5/11	
When signed ..		
When despatched ..		

4.15 5/11

READ AGAIN G.O. No. 357 Rev. MS. dated 3 1926.

" " " " " " 192

READ ALSO:—

C. No. 4238 A/26 From the Board of R : X R+S, No. 5883/26, dated 2-11 1926.

" " " " " " 192

" " " " " " 192

ORDER. Misc. No. 1926, dated 5-XI- 1926.

4 p.m. Govt Order Ltr

The Govt agree with the Board of Revenue that no appeal need be filed against the judgment and decree in O.S No 683/25 on the file of the ~~the~~ file of the District Munsif of Puttur, South Kenara D

2 The following telegram will be sent to the Collector of South Kenara:

your [letter J 7945 E dated J 22nd October E1926 J No appeal necessary against decree in [original J Suit 683 E1925 J Puttur District Munsif ~~Court~~ 3 court

Telegram desired to Collr Mangalore RS 5/XI

Read 5 pm RS 5/XI

Dft AG 6/11/26. order desired RS 5/XI

To The Board of Revenue X R+S

Ry.

Copy to the Collector of South Kenara with the connected records

EP 5/11/26

5/11